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September 27, 2018

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A306
Washington, D.C. 20554

**Re: Petition for Designation as an Eligible Telecommunications Carrier
Pursuant to Section 214(e)(6) of the Communications Act of 1934
Telecommunications Carriers Eligible for Universal Service Support,
WC Docket No. 09-197**

Dear Secretary Dortch:

On behalf of EMPOWER Broadband, Inc. ("EMPOWER"), a wholly-owned direct subsidiary of Mecklenburg Electric Cooperative, please find attached a petition for designation as an eligible telecommunications carrier ("ETC") pursuant to Section 214(e)(6) of the Communications Act of 1934, 47 U.S.C. § 214(e)(6).

Please contact the undersigned if any questions arise concerning EMPOWER's ETC petition or if you require any additional information.

Sincerely,



Todd B. Lantor

Counsel to
EMPOWER Broadband, Inc.

Attachment

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
EMPOWER Broadband, Inc.)	WC Docket No. 09-197
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
Pursuant to Section 214(e)(6) of the)	
Communications Act of 1934)	

**PETITION FOR
ELIGIBLE TELECOMMUNICATIONS CARRIER STATUS**

Pursuant to § 214(e)(6) of the Communications Act of 1934 (“Act”), as amended, and § 54.202 of the Commission’s Rules (“Rules”), EMPOWER Broadband, Inc. (“EMPOWER” or “Petitioner”) respectfully requests designation as a high-cost and/or low-income Eligible Telecommunications Carrier (“ETC”) in the Commonwealth of Virginia in all areas in which its parent company, Mecklenburg Electric Cooperative (“Mecklenburg”), through its participation in the Rural Electric Cooperative Consortium, has been allocated Connect America Fund (“CAF”) Phase II support as a winner of the CAF Phase II auction (“Auction 903”), as well as in certain additional service areas.

Petitioner is a wholly-owned direct subsidiary of Mecklenburg, a non-profit electric cooperative formed in 1938 that serves over 31,000 accounts in portions of nine Virginia counties, as well as five North Carolina counties.

Petitioner is obligated to obtain ETC designation status within 180 days of the Commission's announcement of its winning bids for the locations it will serve,¹ and requests expeditious action by the Commission so that it may meet this requirement.

I. INTRODUCTION AND SUMMARY

Petitioner is a wholly-owned direct subsidiary of Mecklenburg, a non-profit electric cooperative. Mecklenburg is a member of the Rural Electric Cooperative Consortium, which was announced as a winning bidder for a number of locations in Virginia. Pursuant to the process established in the Phase II Auction Closing Public Notice, the Rural Electric Cooperative Consortium has assigned certain winning bids in Virginia to EMPOWER.²

EMPOWER will assist with the deployment and operation of a new state-of-the-art, low latency, fiber-to-the-home ("FTTH") network, that will provide high-speed broadband Internet access and Voice over Internet Protocol ("VoIP") services to cooperative members who lack access to such services. Petitioner will offer Internet service at speeds of 1 Gbps or higher and will provide its customers with voice grade access to the Public Switched Telephone Network ("PSTN") through its interconnected VoIP service.

Petitioner seeks (1) high-cost ETC designation from the Commission in its winning areas of the CAF Phase II-eligible census blocks listed in Exhibit A1 hereto (the "Auction 903 Census Blocks") to deploy voice and broadband services in these areas and low-income ETC designation throughout these same Auction 903 Census Block Groups; and (2) low-income-only ETC designation in additional service areas primarily consisting of Mecklenburg's electric service

¹ 47 C.F.R. § 54.315(b).

² *Connect America Fund Phase II Auction (Auction 903) Closes, Winning Bidders Announced*, FCC Form 683 Due October 15, 2018, Public Notice, DA No. 18-887, rel. Aug. 28, 2018 ("Phase II Auction Closing Public Notice").

footprint, identified in Exhibit A2 (“Additional Service Areas”).³

As discussed in more detail below, the Commission has the authority to grant ETC designation to EMPOWER pursuant to § 214(e)(6) of the Act, and EMPOWER meets all of the statutory and regulatory requirements for ETC designation. Designating EMPOWER as a high-cost and/or low-income ETC in the areas requested will allow EMPOWER to receive CAF Phase II support, as well as federal Lifeline support, in its Proposed ETC Service Area and will serve the public interest by enabling EMPOWER to provide voice and gigabit tier broadband services to its customers – some of whom will be eligible for federal Lifeline benefits.

II. THE COMMISSION HAS AUTHORITY TO GRANT THE ETC DESIGNATION REQUESTED BY EMPOWER

Pursuant to § 214(e)(6) of the Act, the Commission may designate an ETC where the Petitioner “is not subject to the jurisdiction of a state commission.”⁴ The State Corporation Commission of the Commonwealth of Virginia has provided an affirmative statement that it will not assert jurisdiction over broadband and/or VoIP providers seeking ETC designation, and that such providers should apply to the FCC to be designated as an ETC.⁵ In addition, the Code of Virginia provides, in part, that “[t]he [Virginia State Corporation] Commission shall not have jurisdiction with respect to the regulation of Voice-over-Internet protocol service, including but not limited to the imposition of regulatory fees, certification requirements, and the filing or approval of tariffs.”⁶

³ In the aggregate, the Auction 903 Census Blocks and the Additional Service Areas will be referred to as EMPOWER’s “Proposed ETC Service Area.”

⁴ 47 U.S.C. § 214(e)(6).

⁵ See Exhibit B, Application of EMPOWER Broadband, Inc, Case No. PUR-2018-00155, State Corporation Commission, Commonwealth of Virginia, *Order*, adopted Sept. 25, 2018.

⁶ § 56-1.3 of the Code of Virginia.

III. PETITIONER MEETS THE STATUTORY AND REGULATORY PREREQUISITES TO BE DESIGNATED AS AN ETC

As demonstrated herein, EMPOWER satisfies each of the statutory and regulatory requirements set forth in the Act and the FCC's Rules to be a high-cost and/or low-income ETC.

A. Petitioner Will Provide Service as a Common Carrier

EMPOWER will provide service on a common carrier basis in its Proposed ETC Service Area. As such, EMPOWER certifies that it is a common carrier under §§ 214(e)(1) and 214(e)(6) of the Act.⁷

B. Petitioner Will Offer the Services Supported by the Federal Universal Service Support Mechanisms

As described below, EMPOWER certifies that it will provide the following services that are supported by federal universal service support mechanisms:⁸

1. Voice Grade Access to the PSTN – EMPOWER will meet this requirement through the provision of IP-based voice communications service that is interconnected to the PSTN. EMPOWER will be legally responsible for dealing with customer problems, providing quality of service guarantees, and meeting universal service-related requirements. EMPOWER will offer stand-alone voice telephony service throughout its Proposed ETC Service Area, and will offer such service at rates that are reasonably comparable to urban rates. This service will include minutes of use for local service provided at no charge to end users and access to emergency services via 911 or E-911, wherever available from local government or public safety organizations.⁹ EMPOWER also commits to provide toll limitation services to qualifying low-income consumers as provided in §§ 54.400 - 54.423 of the Rules.¹⁰
2. Broadband Internet Access Services – EMPOWER's broadband Internet offering will provide the capability to transmit data to and receive data by wire from all or substantially all Internet endpoints, including any capabilities that are incidental

⁷ See Exhibit C (Affidavit of John C. Lee, Jr.) ("Lee Affidavit").

⁸ See *id.*

⁹ 47 C.F.R. § 54.101(a)(1) and (b).

¹⁰ 47 C.F.R. § 54.101(a)(1).

to and enable the operation of the communications service. EMPOWER will offer low-latency broadband Internet service at speeds of 1 Gbps or higher throughout its Proposed ETC Service Area, and will offer such service at rates that are reasonably comparable to urban rates.¹¹

3. Lifeline Service – EMPOWER will offer Lifeline voice and broadband services to qualifying low-income consumers in accordance with the FCC’s Rules throughout its Proposed ETC Service Area.¹²

EMPOWER further commits to provide these services consistent with the FCC’s high-cost and low-income universal service support rules applicable to it.¹³

C. Petitioner Will Provide Service Using Its Own Facilities

EMPOWER will deploy and operate a new state-of-the-art, low latency, FTTH facilities-based network to provide high-speed broadband Internet access, as well as interconnected VoIP services, to customers and locations in the Auction 903 Census Blocks identified in Exhibit A1, as well as the Additional Service Areas identified in Exhibit A2.¹⁴

D. EMPOWER Will Provide the Requisite Supported Services Throughout Its Proposed ETC Service Area

EMPOWER commits to providing the supported services throughout its Proposed ETC Service Area, consistent with all applicable requirements.¹⁵

¹¹ 47 C.F.R. § 54.101(a)(2).

¹² 47 C.F.R. § 54.405(a), 54.400 *et seq.*

¹³ *See* 47 C.F.R. §§ 54.101 and 54.201.

¹⁴ 47 C.F.R. § 54.201(d)(1).

¹⁵ *See* 47 C.F.R. §§ 54.101 and 54.201.

E. Petitioner Will Advertise the Availability of Its Services and Charges Using Media of General Distribution

EMPOWER will advertise the availability of and charges for its supported service offerings using media of general distribution, and will undertake outreach initiatives to increase consumer awareness of its service offerings, consistent with all applicable requirements.¹⁶

EMPOWER will offer and advertise its broadband and interconnected VoIP services, including those offerings that include all of the supported services, through a combination of media channels, such as television and radio, newspaper, magazines, and other print advertisements, outdoor advertising, direct marketing, and/or the Internet. EMPOWER will use the appropriate media outlets to advertise its universal service offerings in a manner consistent with applicable requirements.

F. Petitioner Possesses the Financial and Technical Capability to Provide the Supported Services

With the financial backing of its parent, Mecklenburg, EMPOWER possesses the financial and technical capabilities to pay for all start-up expenses (*e.g.*, construction, hardware, operations, *etc.*) to get its fiber optic network built and to begin the provision of voice and broadband services throughout its Proposed ETC Service Area. EMPOWER will be able to obtain the requisite amount of lending under its existing lines of credit and EMPOWER will be able to obtain additional financing, in addition to the CAF Phase II support being made available pursuant to Auction 903. Additional construction funding and other financial information will be provided to the FCC by Petitioner as part of its FCC Form 683 application.

¹⁶ 47 C.F.R. § 54.201(d)(2).

G. Petitioner Will Meet the Additional Requirements for Designation as an ETC

Petitioner further certifies that it will meet all of the Commission's requirements for designation as an ETC under § 214(e)(6) of the Act.¹⁷

1. Compliance with Applicable Service and Performance Quality Requirements.

Petitioner certifies that it will comply with the service requirements applicable to the support that it receives, including the requirements for CAF Phase II support, and will provide additional information in this regard as part of its FCC Form 683 application, including a certification from a professional engineer that the fiber optic network is capable of delivering voice and broadband service that meets the requisite performance requirements and sufficient capacity to meet customer demand at or above the prescribed levels during peak usage periods.¹⁸

2. Ability to Remain Functional in Emergency Situations. Petitioner certifies that its fiber optic network will have the ability to remain functional in emergency situations, will have a reasonable amount of back-up power to ensure functionality without an external power source, will be able to reroute traffic around damaged facilities and will be capable of managing traffic spikes resulting from emergency situations.¹⁹ Petitioner's fiber optic network will support telephone service using Session Initiation Protocol-based VoIP technology and will support all phone features, including 911 services.

IV. ANTI-DRUG ABUSE CERTIFICATION

EMPOWER certifies that no party to this petition is subject to denial of federal benefits, including Commission benefits, pursuant to § 5301 of the Anti-Drug Abuse Act of 1988.²⁰

V. GRANT OF THIS PETITION WILL SERVE THE PUBLIC INTEREST

The grant of this petition will clearly serve the public interest by permitting EMPOWER to fulfill the objectives of Auction 903 by bringing low latency, gigabit-speed broadband services to its Proposed ETC Service Area, as well as subsidized voice and broadband services to those

¹⁷ See Exhibit C (Lee Affidavit).

¹⁸ See 47 C.F.R. § 54.309.

¹⁹ See 47 C.F.R. § 54.202(a)(2).

²⁰ See Exhibit C (Lee Affidavit).

households that qualify for federal Lifeline benefits throughout its Proposed ETC Service Area. Petitioner's participation will "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . .,"²¹ and will aid the Commission's objective of ensuring that federal universal service support, including CAF Phase II support, is used "efficiently and effectively."²²

VI. CONCLUSION

For all of the foregoing reasons, EMPOWER respectfully requests that the Commission designate it as a high-cost and/or low-income ETC, as requested, so that EMPOWER will be eligible to receive CAF Phase II support won via Auction 903, as well as provide Lifeline services to those within its Proposed ETC Service Area who are qualified to receive Lifeline benefits.

Respectfully submitted,

EMPOWER Broadband, Inc.



Todd B. Lantor

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Tysons, VA 22102
Phone: (703) 584-8678
E-mail: tlantor@fcclaw.com

Counsel for EMPOWER Broadband, Inc.

²¹ 47 U.S.C. § 1302(a).

²² *Connect America Fund*, 32 FCC Rcd 968, 975 (¶20) (2017).

EXHIBIT A1

**AUCTION 903 CENSUS BLOCK GROUPS IN WHICH PETITIONER SEEKS
HIGH-COST AND LOW-INCOME ETC DESIGNATION
SOLELY WITHIN ITS CAF-II WINNING AREAS**

510259303002

510259303003

510259303004

EXHIBIT A2

**ADDITIONAL SERVICE AREAS (CENSUS BLOCK GROUPS) IN WHICH
PETITIONER SEEKS LOW-INCOME-ONLY (LIFELINE) ETC DESIGNATION**

Note: Where indicated by (*) below, Petitioner is seeking Lifeline-only ETC designation in only the non-CAF-II winning areas of the Census Block Group.

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EXHIBIT B

**AFFIRMATIVE STATEMENT FROM
THE VIRGINIA STATE CORPORATION COMMISSION**

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, SEPTEMBER 25, 2018

APPLICATION OF
EMPOWER BROADBAND, INC.

SCC-CLERK'S OFFICE
DOCUMENT CONTROL CENTER

2018 SEP 25 A 10:14
CASE NO. PUR-2018-00155

For designation as an eligible
telecommunications carrier

ORDER

On September 14, 2018, EMPOWER Broadband, Inc. ("EMPOWER" or "Company"), filed with the State Corporation Commission ("Commission") an application for designation as an eligible telecommunications carrier ("ETC") pursuant to 47 U.S.C. § 214(e), in which the Company asks that the Commission enter an order stating that the Commission declines to exercise jurisdiction over the Company for purposes of making an ETC designation in accordance with 47 U.S.C. § 214(e)(6) ("Request").

In its Request, EMPOWER states that it is a subsidiary of Mecklenburg Electric Cooperative, which has been allocated support funding by the Federal Communications Commission ("FCC") as a winner of an FCC auction to provide broadband services to residents and businesses in portions of multiple counties in Virginia. EMPOWER states that as a condition to this funding, the FCC requires that the Company seek and obtain ETC status for these areas within 180 days of the FCC's August 28, 2018 public notice announcing the winning bids.

EMPOWER states that it intends to provide solely broadband and Voice-over-Internet Protocol ("VoIP") services. The Company notes that pursuant to the applicable federal statutes, the designation of a carrier as an ETC is made by the state commission, except where the carrier

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is not subject to the jurisdiction of the state commission.¹ The Company asserts that the Commission may decline to exercise jurisdiction over it for purposes of making an ETC designation given the Commission's limited jurisdiction over broadband and VoIP.²

EMPOWER notes that in 2015, in dealing with a similar application by BARConnects, LLC ("BARConnects"), the Commission entered an Order finding that as the Commission has not asserted jurisdiction over service providers such as BARConnects, 47 U.S.C. § 214(e)(6) is applicable to the request for ETC designation, and BARConnects should make its request to the FCC to be designated as an ETC.³ EMPOWER states that it must file its application for ETC designation with the FCC by September 27, 2018, if the Commission declines to exercise jurisdiction. Accordingly, EMPOWER requests an expedited determination as to whether the Commission will assert jurisdiction so that the Company may begin the ETC designation process with the FCC, if necessary, and entry of an order declining to exercise jurisdiction before September 27, 2018, if the Commission so determines.

NOW THE COMMISSION, upon consideration of the representations of EMPOWER and of the applicable law, is of the opinion and finds that, as the Commission has not asserted jurisdiction over service providers such as EMPOWER, 47 U.S.C. § 214(e)(6) is applicable to the Company's request for ETC designation, and EMPOWER should make its request to the FCC to be designated as an ETC. We further find that this case should be dismissed.

Accordingly, IT IS SO ORDERED.

¹ See 47 U.S.C. § 214(e)(2) and (6).

² For example, § 56-1.3 of the Code of Virginia provides in part that "[t]he Commission shall not have jurisdiction with respect to the regulation of Voice-over-Internet protocol service, including but not limited to the imposition of regulatory fees, certification requirements, and the filing or approval of tariffs."

³ *Application of BARConnects, LLC, For designation as an eligible telecommunications carrier pursuant to 47 U.S.C. § 214(e)*, Case No. PUC-2015-00015, Doc. Con Cen. No. 150330048, Order (Mar. 30, 2015).

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Todd B. Lantor, Esquire, Lukas, LaFuria, Gutierrez & Sachs, LLP, 8300 Greensboro Drive, Suite 1200, Tysons, Virginia 22102. A copy also shall be delivered to the Commission's Office of General Counsel and Division of Public Utility Regulation.

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EXHIBIT C

**AFFIDAVIT OF
JOHN C. LEE, Jr.
PRESIDENT AND CEO
MECKLENBURG ELECTRIC COOPERATIVE AND
EMPOWER BROADBAND, INC.**

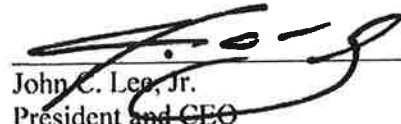
AFFIDAVIT OF JOHN C. LEE, Jr.

COMMONWEALTH OF VIRGINIA)
) SS.
COUNTY OF Mecklenburg)

John C. Lee, Jr., after being duly sworn, states the following:

1. I have personal knowledge of the facts and information set forth in this Affidavit and I am competent to testify to these facts if called as a witness.
2. I am the President and CEO of Mecklenburg Electric Cooperative (“Mecklenburg”) and its wholly-owned direct subsidiary, EMPOWER Broadband, Inc. (“EMPOWER”). Acting on behalf of Mecklenburg and EMPOWER, I have read the Petition to which this Affidavit is attached. I have knowledge of the facts stated in the Petition and those facts are true to the best of my knowledge and my belief.
3. EMPOWER certifies that it is a common carrier under §§ 214(e)(1) and 214(e)(6) of the Communications Act of 1934, as amended (“Act”).
4. EMPOWER commits to provide the services and functionalities required for designation as an Eligible Telecommunications Carrier (“ETC”), as requested, in the areas identified in Exhibits A1 and A2 to the Petition.
5. EMPOWER certifies that it will meet all of the Commission’s requirements for designation as an ETC under § 214(e)(6) of the Act, as specified in paragraphs 1 and 2 of Section II.G. of the Petition.
6. I am the corporate officer responsible for certifying EMPOWER’s use of federal high-cost support. Petitioner is eligible to be designated as an ETC within the meaning of Section 214(e) of the Act, and is eligible to receive universal service support pursuant to Section 254(e) of the Act.
7. Petitioner will use the federal high-cost support funds that it receives only to provide, deploy, upgrade and/or maintain facilities and services for which the support is intended.

8. Petitioner certifies that no party to this petition is subject to denial of federal benefits, including Commission benefits, pursuant to § 5301 of the Anti-Drug Abuse Act of 1988.


John C. Lee, Jr.
President and CEO
Mecklenburg Electric Cooperative and
EMPOWER Broadband, Inc.

County of Mecklenburg Commonwealth of Virginia

The foregoing instrument was acknowledged before me
this 27 day of September, 2018, by John C. Lee, Jr.

Carolyn Throckmorton Glass

Notary Registration Number: 7552627

My commission expires: 11-30-2021

